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IN THE EIGHTH JUDICIAL DISTRICT COURT

UINTAH COUNTY, STATE OF UTAH

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THE STATE OF UTAH,

Plaintiff,

vs.

STEVEN L. EVANS, JOSEPH L. EVANS,  
COUNTRY GOLD BROADCASTING,  
INC., and EVANS BROADCASTING, INC.

Defendants.

**COMPLAINT**

ALLEGING VIOLATIONS OF THE  
UTAH ANTITRUST ACT

CASE NO. 980800622M1

JUDGE: *A Lynn & Wayne*  
*John E. Anderson*

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The STATE OF UTAH, by and through the Attorney General, brings this civil antitrust action to restrain and enjoin anticompetitive and monopolistic practices by defendants in connection with the operation of radio stations in the Uintah Basin of Utah.

**A. JURISDICTION AND VENUE**

1. The STATE OF UTAH brings this action under authority of the Utah Antitrust Act (Act), Utah Code Ann. §76-10-918, wherein the Attorney General is empowered to bring an action in the District Court to enforce compliance with the Act, and to recover damages and civil penalties.
2. The unlawful acts and practices alleged in this Complaint occurred in Uintah, Duchesne, and Daggett Counties and elsewhere in the State of Utah. Venue is proper in this district under Utah Code Ann. §78-13-7 as the cause of action arose in Uintah County where the individual defendants reside.

**B. DEFENDANTS**

3. STEVEN L. EVANS is the general manager of KVEL and KLCY, radio stations located in Vernal, Utah. KVEL and KLCY are owned by Ashley Communications, Inc. Steven L. Evans is a part owner of Ashley Communications, Inc. KVEL and KLCY are AM and FM components of one radio station and both operate from the same facilities in Vernal. Steven Evans resides in Vernal.
4. JOSEPH L. EVANS is the general manager of radio stations KNEU and KIFX, located in Roosevelt, Utah. KNEU and KIFX are owned by defendants COUNTRY GOLD BROADCASTING, INC., and EVANS BROADCASTING, INC., respectively. Joseph L. Evans and Teddie R. Evans are the owners of Country Gold Broadcasting and Evans

Broadcasting. KNEU and KIFX are AM and FM components of one radio station and both operate from the same facilities in Roosevelt, Utah. Joseph Evans is the father of Steven Evans and resides in Vernal.

### **C. NON-DEFENDANT ENTITY**

5. DEE PROPERTIES, L.L.C. was created as a Utah limited liability corporation on November 7, 1994. It has six members; James C. Davis, Steven Evans, Joseph Evans, and their wives. Davis is the controlling owner of Ashley Communications, Inc. which owns the Vernal radio stations KVEL and KLCY. DEE Properties, L.L.C.'s business is the common ownership of the land upon which, and the buildings in which, the Vernal radio stations are operated.

### **D. BACKGROUND**

6. The two radio stations in Roosevelt owned and operated by Joseph Evans and the two stations in Vernal operated by Steven Evans are the only radio stations in the Uintah Basin (counties of Uintah, Duchesne, and Daggett) that offer local programming content and local advertising. They are the only competitors for this type of business within the geographic market.
7. All four radio stations operate under licenses granted by the Federal Communications Commission (FCC). Those licenses are necessary for lawful operation of the radio stations. The FCC does not, however, regulated the prices charged by radio stations for

commercial advertising.

8. The Vernal radio stations are competitors to the Roosevelt radio stations. The Vernal stations are the only radio stations that offer local programming content and local advertising that compete with the Roosevelt radio stations. The converse also is true for the Roosevelt stations.
9. DEE Properties, L.L.C. exists for the purpose of managing the real estate asset owned by the company. That asset is the land and building used by the Vernal radio stations for their operations.
10. DEE Properties, L.L.C. is owned by the Davis, Steve Evans, and Joseph Evans families. Steve Evans and Joseph Evans operate competing radio stations yet also are co-managers of DEE Properties.
11. As a result of DEE Properties: a) Joseph Evans is part owner of his competitor's land and building, b) Joseph Evans and Steve Evans are joint owners of a business closely related to the operation of radio stations in the same market, and c) Joseph Evans and Steve Evans have the opportunity and motive to operate DEE Properties so as to lessen competitive conduct between the radio stations they each operate.
12. The Vernal radio stations and the Roosevelt radio stations both produce advertising for customers. In some cases the advertising services consists only of selling air time for advertisements already produced by, or for, the customers. In other cases, defendants

also produce the advertisements that will run on their radio stations. In some instances, the radio stations in one town will produce advertisements that will run not only on the airwaves of those stations, but also the airwaves of the competing stations and other radio stations outside the broadcast market.

13. As is common in the industry, customers are not billed separately for the production of advertising and for the air time. Defendants do not charge each other for costs incurred in the production of advertising used on the other stations.
14. By sharing the production operations without separately charging customers or billing the other stations, defendants operate in a way to avoid at least some of the competition for the production element of the radio advertising business.
15. Each of the four radio stations supports certain community and sports events. In some instances, all the radio stations are supporters of certain events.
16. Defendants Joseph Evans and Steven Evans both participate in volunteer activities, planning for community and charitable events in the Uintah Basin. In some cases, both defendants participate in planning of the same events, and each of their radio stations are supporters of those events.

#### **E. RELEVANT MARKETS**

17. The local broadcast radio market is a distinct product market. They collect advertising revenues targeted at listeners in their broadcast areas. Local advertisers do not find it cost

effective to pay the higher rates to advertise on radio stations located in Salt Lake City, or other locations and which are re-transmitted to the Uintah Basin. To do so, results in payment of higher advertising rates and reaching a smaller listening base.

18. There are no television stations in the immediate area that provide an alternative for broadcast advertising. The only newspaper in the area is distributed weekly. As a result, the radio stations provide the only broadcast media and the only daily news and advertising source for the area.
19. The radio stations do face competition for advertising revenue from other forms of advertising. These include advertising on cable television through the local cable provider, a local community access cable television channel, two weekly newspapers, and a classified advertising newspaper produced twice weekly.
20. The Federal Communications Commission (FCC) has allocated five commercial radio stations to this broadcast market. Four are held by defendants. A fifth license has been granted to a new FM radio station that will begin operation in Vernal before the end of 1998.
21. Each radio station is licensed to broadcast at not only a certain frequency but also at a designated strength (watts). With the designated signal strengths for defendants' radio stations, the broadcast areas overlap each other. For the most part, the signals reach the Uintah Basin, made up of the counties of Uintah, Duchesne, and Daggett. There are not

other radio stations operating from, and offering local advertising and content for, the Uintah Basin.

22. The relevant product market is local radio broadcasting.
23. The relevant geographic market is the Uintah Basin.

## **F. ALLEGATIONS**

### **COUNT ONE**

#### **Contract, Combination or Conspiracy in Restraint of Trade**

The allegations contained in paragraphs 1 through 23 are hereby incorporated and realleged as if fully set forth herein.

24. The joint activities engaged in by defendants, as described above, are contracts, combinations, or conspiracies.
25. The activities of defendants in engaging in joint activities and avoiding competition in certain areas of operation operated as restraints on trade and commerce.
26. These contracts, combinations, and conspiracies in restraint of trade and commerce violate § 76-10-914 (1) of the Act.
27. Defendants have violated Utah Code Ann. §76-10-914 (1).

### **COUNT TWO**

#### **Monopolization and Attempted Monopolization of Trade and Commerce**

The allegations contained in paragraphs 1 through 27 are hereby incorporated and

realleged as if fully set forth herein.

28. The activities described above, such as the operation of DEE Properties and the creation of advertising for the only competing radio stations had the potential to monopolize or to attempt to monopolize the trade and commerce of local broadcast radio stations in the Uintah Basin of Utah in violation of § 76-10-914 (2) of the Act..
29. Defendants have violated Utah Code Ann. §76-10-914 (2).

### **PRAYER FOR RELIEF**

Wherefore, plaintiff prays for a judgment in favor of plaintiff and against defendants as follows:

- A. That defendants be adjudged to have violated the Utah Antitrust Act.
- B. That defendants and their agents be permanently enjoined from engaging in any acts, practices or conduct that would constitute violations of the Utah Antitrust Act, § 76-10-911, *et seq.*,
- C. That defendants be ordered to pay damages in an amount to be determined at trial to compensate for the effects of their anticompetitive conduct.
- D. That defendants be assessed a fine in the amount of \$100,000 each. The fine to be paid into the antitrust revolving account described in § 76-10-922.
- E. That plaintiff be awarded attorney's fees and costs incurred in the preparation and prosecution of this action and an award of filing fees to the Court.



F. Such other and further relief as this Court may deem equitable and just.

DATED This 17<sup>th</sup> day of November, 1998.

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By: Wayne Klein  
R. Wayne Klein

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THE STATE OF UTAH